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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,498	03/29/2004	Gerald Duhamel	P1025US01	8902
77130 7590 09/30/2008 LABTRONIX CONCEPT C/O BENOIT & CO INC. 2025 LIMOGES LONGUEUIL, QC J4G 1C4 CANADA				
EXAMINER SAGER, MARK ALAN				
ART UNIT		PAPER NUMBER		
3714				
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09/30/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/811,498

Applicant(s)

DUHAMEL ET AL.

Examiner

M. Sager

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/20/08 has been entered.

Double Patenting

2. Due to breadth of pending claims herein and co-pending applications pertaining to bonus, bonus games and triggering events therein, Applicant is reminded to maintain a clear line of demarcation between pending applications. See MPEP § 822.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification, as originally filed, fails to adequately convey to an artisan that the inventor at the time of filing of application, possessed the invention as presently claimed regarding operating a meter displayed as at least three different statuses of an evolving symbol where this form of claimed invention requires the meter to display the claimed multiple statuses

at same temporal instant, as presently included in its boundaries at least since there is no indicator/meter presently disclosed as simultaneously displaying multiple statuses.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to how a meter simultaneously displays multiple statuses as claimed.

7. Claims 3-4 recites the limitation "the event" in 1 that lacks antecedent basis when the occurrences is either predetermined symbol or predetermined combination of symbols, as claimed. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. For the record, the Office is presenting a number of holdings over different references due solely to the vast number of alternative forms of claimed invention being applicable to numerous different bonus, comp and reward schemes as shown by the application of the

teachings from each of the applied references. The various bonuses, bonus conditions and triggering conditions claimed are presented in evidence cited from each respective reference.

10. Claims 1-3, 15-16 and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Clarke (4669731) or Stupak (5695402). Clark (abstract, 1:55-2:10, figs 1-2) and Stupak (abstract, 1:56-2:6, figs 1-4) disclose a method, a medium storing a program and game apparatus for displaying a line game, operating a meter displayed as at least three different statuses of evolving symbols as an evolving count of lost games for triggering a feature based on at least one of the statuses such as awarding a bonus upon the count on the meter reaching a predetermined or random threshold value to award the bonus wherein the meter is used to gather occurrences of an event that is dependent of game outcome such as losing outcome.

11. Claims 1-2, 4, 15-16 and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Tracy 5280909). Tracy (abstract, 3:26-62, fig 1) discloses a method, a medium storing a program and game apparatus for displaying a line game, operating a meter displayed as at least three different statuses of evolving symbols as an evolving count of lost games for triggering a feature based on at least one of the statuses such as awarding a bonus upon the count on the meter reaching a predetermined or random threshold value to award the bonus wherein the meter is used to gather occurrences of an event that is independent of game outcome such as bet value.

12. Claims 1-2 and 5-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Barrie (5833537). Barrie discloses a method, computer program on a readable medium and game apparatus for displaying a line game (abstract, 2:60-3:3, figs 1-8b), operating a meter displayed as at least three different statuses of an evolving symbol (abstract, 2:8-32, figs 1-8B), triggering a feature based on at least one of the statuses (abstract, 2:8-32, figs 1-8b, ref 520), wherein the

meter is used to gather [count=accumulate, collect] occurrences of a predetermined symbol (abstract, 2:8-32, figs 1-8b), wherein evolving symbol occurs on a reel each occurrence comprising an ESU (abstract, 2:8-32, figs 1-8b), wherein all ESUs evolve upon occurrence of an evolution trigger wherein the evolution trigger occurs when the meter reaches a predetermined threshold (5:2-23), wherein only a portion of the ESUs evolve upon occurrence of an evolution trigger when the meter reaches a predetermined threshold (6:38-48) wherein number of evolving ESUs is randomly selected wherein the evolving ESUs are randomly selected (6:38-48), wherein the evolving ESUs are those displayed when evolution trigger occurs (abstract, 2:8-32, 6:38-48, figs 1-8b), wherein all evolving ESUs evolve at the same rate (abstract, 2:8-32, 5:2-23, 6:38-48, figs 1-8b), wherein each ESU evolves independently (abstract, 2:8-32, 5:2-23, 6:38-48, figs 1-8b), a meter gathering occurrences of a predetermined event abstract, 2:8-32, 5:2-23, 6:38-48, figs 1-8b), a display controller displaying said meter as at least three different statuses of an evolving symbol according to a value of said meter (abstract, 2:8-32, 5:2-23, 6:38-48, figs -8b), an evaluation means triggering a feature in a line game based on one of statuses (abstract, 2:8-32, 5:2-23, 6:38-48, figs 1-8b).

13. Claims 1-3, 5-7, 10-13, 15-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Engلمان. Engلمان discloses a method of operating a game comprising the steps of displaying a line game/slot game (abstract, Para 0007, 0024, figs 1-14), operating a meter displayed as at least three different statuses of an evolving symbol (abstract, Para 0007, 0034-0068, Figs. 4-5, 7, 9) wherein at least one of the statuses is used in the line game to trigger a feature (abstract, Para 0007, 0034-0068 figs 1-14), the meter is used to gather occurrences of predetermined symbol or of an event dependent of game outcome (abstract, Para 0007, 0034-0068, figs 1-14), wherein

said evolving symbol occurs on a reel, each occurrence of evolving symbol comprising an ESU (abstract, Para 0007, 0034-0068, figs 1-14), wherein all ESUs evolve upon the occurrence of a triggering event (abstract, Para 0007, 0034-0068, esp.0040, 0045, figs 1-14), wherein the evolution trigger occurs when the meter reaches a predetermined threshold (abstract, Para 0007, 0034-0068, esp. 0040, 0045, figs 1-14), wherein the number of evolving ESUs is randomly selected (abstract, Para 0007, 0034-0068, figs 1-14), wherein the evolving ESUs are randomly selected (abstract, Para 0007, 0034-0068, figs 1-14), wherein the evolving ESUs are those displayed when the evolution trigger occurs (abstract, Para 0007, 0034-0068, figs 1-14), wherein all evolving ESUs evolve at the same rate (abstract, Para 0007, 0034-0068, figs 1-14), wherein the feature triggered in the game by evolving symbol is a bonus payout, on screen bonus or change in symbol bonus (abstract, Para 0007, 0034-0068, figs 1-14), a meter gathering occurrences of a predetermined event (abstract, Para 0007, 0034-0068, figs 1-14), a display controller displaying said meter as at least three different statuses of an evolving symbol according to a value of said meter (abstract, Para 0007, 0034-0068, figs 1-14), an evaluation means triggering a feature in a line game based on one of said statuses (abstract, Para 0007, 0034-0068, figs 1-14).

Response to Arguments

14. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection. Applicant continues to assert patentability upon features/functions disclosed but not positively recited in claims in manner argued. This is not an acknowledgement of any patentable matter, but rather is noting on record that language from the specification may not be read into the claims as consistent with law and court decisions. The

breadth of claimed invention is much broader than asserted by Applicant, hence the applied art herein. Finally, Applicants categorization of the level of skill/ability of a POSITA in remarks filed 6/20/08 and 5/17/07 is noted appear to conflict and in any event are opinion statements presented by counsel/Applicant with no factual basis. The Office asserts the skill level of a POSITA is as presented by the art of record as a POSITA is knowledgeable of the computations required that differentiates the various chance games and the myriad bonus, reward and bonus schemes therein. For Applicant to assert the skill level of a POSITA as being a technician who provides a pitch of advantages of a feature without factual basis is not well taken in Applicants field of endeavor of the highly complex, competitive computerized multi-level bonus gaming art.

Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Sager whose telephone number is 571-272-4454. The examiner can normally be reached on T-F, 0700-1730 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. Sager/
Primary Examiner, Art Unit 3714